REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

FIRST ASIA REALTY DEVELOPMENT CORPORATION and SM PRIME HOLDINGS, INC.,
Petitioners,

C.T.A. CASE NOS. 7079, 7085, 7111 & 7272

- versus -

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 22 2006, 1:02PM

x - x

DECISION

ACOSTA, E., PJ.:

These consolidated petitions seek the reversal of the decisions of the Commissioner of Internal Revenue holding petitioners liable for deficiency value-added taxes on its gross receipts derived from cinema ticket sales for taxable years 1999, 2000, 2002 and 2003, summarized as follows:

CTA Case No.	Assessment Notice No.	Deficiency VAT	Year
7079	VT-00-000098	₱124,035,874.12	2000
7085	VT-99-000057	35,823,680.93	1999
7111	VT-00-000122	35,840,895.78	2000
7272	003-03 and	28,590,826.50	2003
	008-02	33,610,202.91	2002
TOTAL		₱257,901,480.24	

372

Culled from the parties' Consolidated Joint Stipulation of Facts and Issues and records of this case, are the following sets of facts:

Petitioner *SM Prime Holdings, Inc.* is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at SM Corporate Offices, Bldg. A, 1000 Bay Blvd., SM Central Business Park, Bay City, Pasay City.

Petitioner *First Asia Realty Development Corporation* is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at SM Megamall Bldg. A., EDSA cor. J. Vargas Avenue, Mandaluyong City.

Respondent is the duly-appointed Commissioner of Internal Revenue with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

CTA Case No. 7079

On September 26, 2003, former Bureau of Internal Revenue (BIR) Deputy Commissioner Estelita C. Aguirre sent petitioner *SM Prime Holdings, Inc.,* a Preliminary Assessment Notice informing that after investigation, there has been found due from petitioner an alleged deficiency value added tax (VAT) on cinema ticket sales, inclusive of increments, *for taxable year 2000*, in the amount of ₱119,276,047.40 due to petitioner's failure to declare in its VAT returns the gross receipts it derived from cinema ticket sales for the said period, as well as its failure to pay the corresponding VAT due thereon.

In a letter dated December 15, 2003, petitioner filed its protest to the Preliminary Assessment Notice.

On December 12, 2003, a Formal Letter of Demand for the alleged deficiency value-added tax for taxable year 2000, with Details of Discrepancies attached thereto, was received by petitioner from respondent. Petitioner, through its Vice-President/ Corporate Tax Division Cecilia R. Patricio, then filed a protest-letter dated January 14, 2004.

On September 16, 2004, petitioner received a copy of respondent's Decision dated September 6, 2004, denying its protest against Assessment Notice No. VT-00-000098 involving the amount of ₱124,035,874.12 as alleged deficiency value-added tax for taxable year 2000.

Thus, petitioner *SM Prime Holdings, Inc.* filed on October 15, 2004, a *Petition for Review With Prayer For Suspension Of Collection* questioning the above *Decision* of the respondent for lack of legal and factual basis and for being unfair and unjust. It likewise prays that pending the final resolution of the case, the collection of taxes allegedly due be suspended.

CTA Case No. 7085

On May 15, 2002, former BIR Assistant Commissioner for Large Taxpayers Service Edwin R. Abella sent petitioner *First Asia Realty Development Corporation* a Preliminary Assessment Notice informing that after investigation, there has been found due from petitioner an alleged deficiency value-added tax on cinema ticket sales, inclusive of increments, *for taxable year 1999*, in the total amount of ₱35,823,680.93 because of its failure to declare in its VAT returns the gross receipts it derived from cinema ticket sales for the period, as well as pay the corresponding VAT due thereon.

In a letter dated July 9, 2002, petitioner filed its protest to the Preliminary Assessment Notice.

On November 14, 2002, a Formal Letter of Demand for the alleged deficiency value-added tax for taxable year 1999, with Details of Discrepancies attached thereto, was received by petitioner from respondent. Petitioner, through its Vice-President/Corporate Tax Division Cecilia R. Patricio, then filed a protest-letter dated December 12, 2002.

On September 20, 2004, petitioner received a copy of the respondent's *Decision* dated September 6, 2004 denying its protest.

374

Thus, petitioner filed on October 20, 2004, a *Petition for Review With Prayer For Suspension Of Collection* with this Court praying that judgment be rendered reversing and nullifying the said *Decision* of respondent for lack of legal and factual basis and for being unfair and unjust. It likewise prays that pending the final resolution of the case, the collection of taxes allegedly due be suspended.

CTA Case No. 7111

On April 16, 2004, former BIR Deputy Commissioner Estelita C. Aguirre, OIC for Large Taxpayers Service, sent petitioner *First Asia Realty Development Corporation* a Preliminary Assessment Notice informing that after investigation, there has been found due from petitioner an alleged deficiency value-added tax on cinema ticket sales, inclusive of increments, *for taxable year 2000*, in the total amount of ₱35,840,895.78 since petitioner allegedly failed to declare in its VAT returns the gross receipts it derived from cinema ticket sales for the period, as well as pay the corresponding VAT due thereon.

In a letter dated April 22, 2004, petitioner filed its protest to the Preliminary Assessment Notice.

On June 17, 2004, a Formal Letter of Demand for the alleged deficiency value-added tax for taxable year 2000, with Details of Discrepancies attached thereto, was received by petitioner from respondent. Petitioner, through its Vice-President/ Corporate Tax Division Cecilia R. Patricio, then filed a protest-letter dated July 9, 2004.

On November 18, 2004, petitioner received a copy of respondent's *Decision* dated October 05, 2004 denying its protest against Assessment Notice No. VT-00-000122 involving the amount of ₱35,840,895.78 as alleged deficiency value added tax for taxable year 2000.

Thus, petitioner filed on December 16, 2004, a *Petition for Review With Prayer For Suspension Of Collection* for the reversal of respondent's *Decision* dated October 5, 2004 for lack of legal and factual basis and for being unfair and unjust. It likewise prays that pending

375

the final resolution of the case, the collection of taxes allegedly due be suspended as well as the issuance of any warrant of distraint and levy in connection therewith.

CTA Case No. 7272 (Assessment Notice No. 008-02)

On October 29, 2004, former BIR Commissioner Guillermo L. Parayno, Jr. sent petitioner *First Asia Realty Development Corporation* a Preliminary Assessment Notice informing it, that after investigation, there has been found due from petitioner an alleged deficiency value-added tax, inclusive of increments, *for taxable year 2002,* in the total amount of ₱32,802,912.21 due to petitioner's alleged failure to declare in its VAT returns the gross receipts it derived from cinema ticket sales for the period, as well as pay the corresponding VAT due on.

In a letter dated November 11, 2004, petitioner filed its protest to the Preliminary Assessment Notice.

On November 23, 2004, a Formal Letter of Demand for the alleged deficiency value added tax for taxable year 2002, with Details of Discrepancies attached thereto, was received by petitioner from respondent. Petitioner then filed a protest-letter dated December 14, 2004.

On May 23, 2005, petitioner received a copy of respondent's *Decision* dated May 11, 2005 denying its protest against Assessment Notice No. 008-02 involving the amount of ₱33,610,202.91 as alleged deficiency value added tax for taxable year 2002.

CTA Case No. 7272 (Assessment Notice No. 003-03)

On September 8, 2004, former BIR Commissioner Guillermo L. Parayno, Jr. sent petitioner *First Asia Realty Development Corporation* a Preliminary Assessment Notice informing it that after investigation, there has been due from petitioner an alleged deficiency value-added tax, inclusive of increments, *for taxable year 2003*, in the total amount of

376

₱28,196,376.46 because petitioner allegedly failed to declare in its VAT returns the gross receipts it derived from cinema ticket sales, as well as pay the corresponding VAT due.

In a letter dated September 23, 2004, petitioner filed its protest to the Preliminary Assessment Notice.

On October 29, 2004, petitioner received from respondent a Formal Letter of Demand for the alleged deficiency value added tax for taxable year 2003, with Details of Discrepancies attached thereto. Petitioner then filed its protest-letter dated November 11, 2004.

On May 23, 2005, petitioner received a copy of respondent's *Decision* dated May 11, 2005 denying its protest against Assessment Notice No. 003-03 involving the amount of ₱28,590,826.50 as alleged deficiency value-added tax for taxable year 2003.

Thus, petitioner filed on June 22, 2005 a *Petition for Review With Prayer For Suspension Of Collection* and prayed that the Court renders judgment reversing the *Decision* dated May 11, 2005 of the respondent which denied its protests for both taxable years 2002 and 2003 involving the respective amounts of P33,610,202.91 and P28,590,826.50. Petitioner likewise prays that pending the final resolution of the case, the collection of taxes allegedly due, as well as the issuance of any warrant of distraint and levy in connection therewith be suspended.

Respondent filed his Answer to the respective cases on the following dates:

CTA Case No. 7079 – December 29, 2004;

CTA Case No. 7985 – December 13, 2004 (registered mail);

CTA Case No. 7111 – May 11, 2005; and

CTA Case No. 7272 – September 2, 2005.

On July 1, 2005, however, petitioner in CTA Case No. 7079, *SM Prime Holdings, Inc.*, filed a Motion for Consolidation to consolidate CTA Case Nos. 7085, 7111 and 7272 (all filed by *First Asia Realty Development Corporation* and pending before the Second Division of the

377

Court) with CTA Case No. 7079 (the case with the lowest docket number and pending before the First Division of the Court), since not only the issues in all the above cases are identical but *SM Prime Holdings, Inc.* is also the majority shareholder of *First Asia Realty Development Corporation* holding 54.41% of the latter's outstanding shares.[1]

In a resolution of August 25, 2005, the Second Division of the Court granted the Motion for Consolidation subject to the conformity of the First Division.[2] On September 2, 2005, the First Division of the Court issued a resolution conforming to the consolidation of the subject cases.[3]

The parties filed their Consolidated Joint Stipulation of Facts and Issues on January 10, 2006. Thereafter, they submitted the cases for decision as they involve purely legal issues. Upon the filing of the parties' respective memoranda, the case was submitted for decision on May 12, 2006.

The **common and primary issue** which the parties stipulated on for this Court to decide, is whether the gross receipts derived by operators/proprietors of cinema/ticket houses from admission tickets is subject to 10% VAT.

In support of their respective petitions, petitioners advance the following arguments:[4]

> I.
>
> Historically, by the nature of their business, the gross receipts of proprietors or operators of cinemas/theaters derived from public admission have always been subject to amusement tax, not to VAT or any business tax. They have never been included in the coverage of, nor intended to be subject to, the original VAT law and all its succeeding amendments.
>
> II.
>
> There is no provision of law which imposes 10% VAT on gross receipts from admissions to cinemas/theaters in addition to the 30% amusement tax imposed under the Local Government Code of 1991.

---

1 Pages 126-128, Records, CTA Case No. 7079.
2 Pages 126-137, Records, CTA Case No. 7079.
3 Pages 143-144, Records, CTA Case No. 7079.
4 Please see petitioners' Memorandum.

378

III.

The business of proprietors, lessees or operators of cinemas/theaters is not within the coverage of the VAT under the National Internal Revenue Code (NIRC), as amended.

IV.

It is erroneous for respondent to interpret the provisions of R.A. 7160, otherwise know as the "Local Government Code of 1991," in its favor (i) when the intention of the law was to devolve the power to impose amusement tax on cinemas/theaters to the local government units concerned to the exclusion of the national taxing authority, and (ii) where the power thus devolved has not been revoked or restored to the national government.

V.

The laws do not intend to subject the same revenue source under the simultaneous administration of both the national and local governments.

VI.

The unilateral action on the part of the BIR in imposing VAT – a national tax—on gross receipts from cinema/theater admissions on top of the amusement tax imposed by the local government units makes this industry the highest taxed industry and the most discriminated against amusement business in the country, which threatens its viability. It therefore violates petitioner's right to substantive due process.

VII.

Further, the unexpected and inexplicable imposition of 10% VAT on cinemas/theater admission through an unpublished ruling of general application – without benefit of public hearing, without notice of the affected sector, and with retroactive effectivity and attendant penal liability – is not only in utter violation of the requirements of due process but is also highly irregular and confiscatory.

VIII.

RMC No. 28-2001 constitutes administrative legislation which is prohibited.

On the other hand, respondent proffers the following arguments:[5]

1) petitioners' exhibition of movies to the paying public is a sale of service;
2) the assessments are based on explicit provisions of law;
3) petitioners' claimed exemption has no basis in law;
4) contrary to petitioners' claim, respondent is not interpreting the Local Government Code in his favor;
5) questions on the wisdom of the law are not proper issues to be brought before this Court; and
6) petitioners were not taxed through an unpublished ruling and circular.

---

5 See respondent's Memorandum.

379

After weighing the arguments of both parties, applicable laws and jurisprudence, the Court finds merit in the subject petitions.

The value-added tax is a form of sales tax as it is a tax on consumption levied on the sale of goods and services in the Philippines.[6] Generally, a person is liable to pay value-added tax if, in the course of trade or business, he sells, barters, exchanges or lease goods, properties or renders services or import goods.

In deciding on the issue, this Court finds it imperative to consider not only the statute and the language used in the statute; this Court also has to take into consideration all the facts and circumstances existing at the time of, and leading to, the enactment of the statute, such as the history of the times, contemporary customs, the state of the existing law, the evils to be remedied and the remedy provided.[7]

The early form of VAT, known as Philippine sales tax system, was characterized with a single-stage tax from the period 1936 to 1978.

In 1978, P.D. No. 1358 was issued as there was a need to restructure the sales tax system to make it more progressive and responsive to the requirements of a developing economy.[8] It adopted the tax credit method in computing sales tax.

In 1980, P.D. 1705 was issued empowering the President, upon recommendation of the Ministry of Finance, to subject second sale of any article taxable under the 1977 Tax Code to a value added tax at rates not exceeding twenty percent (20%).[9]

In 1981, P.D. 1773 was issued empowering the President, upon recommendation of the Ministry of Finance, to subject second sale of any article taxable under the Tax Code to a value-added tax at rates not exceeding fifty percent (50%) based on the gross selling

---

6 Deoferio, Jr. and Mamalateo, *The Value-Added Tax In the Philippines*, p. 33.
7 *Molina vs. Rafferty,* 38 Phil. 167.
8 "Further Amending Certain Sections Of Title V Of The National Internal Revenue Code, As Amended."
9 "Amending Certain Sections Of The National Internal Revenue Code Of 1977."

price or gross value of any of the article sold, bartered, exchanged or transferred, less the cost of the article.[10]

In 1985, P.D. 1991 was issued as there was the imperative need to simplify and restructure certain provision of the Tax Code, particularly those imposing sales tax.[11]

In 1986, P.D. 2006 was issued with the primary purpose of reducing the tax impact on second sale and to make the tax burden more equitably distributed at every stage of subsequent sale.[12]

Subsequently, former President Corazon C. Aquino issued E.O. 273[13] as one of the structural reforms provided in the 1986 Tax Reform Program. E.O. 273 rationalized the system of taxing goods and services by imposing a multi-stage value-added tax to replace the tax on original and subsequent sales tax and percentage tax or certain services. It reads:

> SECTION 1. The provisions of Title IV governing excise taxes are hereby transferred to Title VI and replaced with new provisions imposing a value-added tax to read as follows:
>
> "TITLE VI. — VALUE-ADDED TAX
> "Chapter 1. — IMPOSITION OF TAX
>
> "SECTION 99. Persons liable. — Any person who, in the course of trade or business, sells, barters or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.
>
> xxx xxx xxx
>
> "SEC. 102. Value-added tax on sale of services. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipt derived by any person engaged in the sale of services. The phrase 'sale of services' means of performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate,

---

10 "Amending Certain Sections Of The National Internal Revenue Code."

11 "Restructuring and Amending Certain Provisions of the National Internal Revenue Code To Be Known As The 'Sales Tax Reform Decree of 1985."

12 "Amending Certain Sections of the National Internal Revenue Code To Provide For Sales Tax On Subsequent Sales and Simplify Tax Administration."

13 "Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions Of The National Internal Revenue Code, And For Other Purposes."

381

commercial, customs and immigration brokers; lessors of personal property; **lessors or distributors of cinematographic films**; persons engaged in milling, processing , manufacturing or repacking goods for others; and similar services, regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: Provided, That the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.

"(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency, inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

"(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

"(3) xxx

"'Gross receipts' means the total amount of money or its equivalent representing the contract price, compensation of service fee, including the amount charged for materials supplied with the services and deposits of advance payments actually or constructively receive during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax.

"SEC. 103. Exempt Transactions. — The following shall be exempt from the value-added tax;

xxx xxx xxx

"(j) **Services rendered by persons subject to percentage tax under Title V**;

xxx xxx xxx

In 1992, R.A. No. 7643 was enacted empowering the Commissioner of Internal Revenue to require the payment of the value-added tax every month.[14]

[14] "An Act To Empower the Commissioner Of Internal Revenue To Require the Payment Of the Value-Added Tax Every Month And To Allow Local Government Units To Share In VAT Revenue, Amending For This Purpose Certain Sections of the National Internal Revenue Code."

382

To restructure the value-added tax system in the country, R.A. No. 7716 was enacted in 1994.[15] Relevant portions of the law, in relation to the case, read:

SECTION 1. Section 99 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 99. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be liable to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code.

"The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of this Act.

"The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

"The rules of regularity, to the contrary, notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

SECTION 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties,

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films**; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes

[15] "An Act Restructuring the Value-Added Tax (VAT) System, Widening Its Tax Based And Enhancing Its Administration, And For These Purposes Amending And Repealing the Relevant Provisions Of the National Internal Revenue Code, As Amended, And For Other Purposes."

383

and other eating places, including clubs and caterers; dealers in securities; landing investors; operators of taxicabs; utility cars for rent or hire driven by the lessees (rent-a-car companies), tourist buses; and other common carriers by land, air, and sea relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity and indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

"xxx xxx xxx

"(7) The lease of motion picture films, films, tapes and discs; and

"xxx xxx xxx

"The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rentals or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

"xxx xxx xxx

SECTION 4. Section 103 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 103. Exempt transactions. — The following shall be exempt from the value-added tax:

"xxx xxx xxx

"(j) Services subject to percentage tax under Title V;

"xxx xxx xxx

In 1997, R.A. 8241 (or Improved VAT Law) was enacted, which made remedial amendments to some provisions of R.A. 7716.[16] Pertinent to the case are the following provisions:

---

16 "An Act Amending Republic Act No. 7716, Otherwise Known As the Expanded Value-Added Tax Law And Other Pertinent Provisions Of the National Internal Revenue Code, As Amended."

384

SECTION 1. Section 3 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films**; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

xxx xxx xxx

"(7) **The lease of motion picture films, films, tapes and discs and**;

xxx xxx xxx

SECTION 2. Section 4 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 4. Section 103 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

385

"Sec. 103. Exempt Transactions. — The following shall be exempt from the value-added tax:

"xxx xxx xxx

"(j) Services subject to percentage tax under Title V;

"xxx xxx xxx

(Underlining supplied.)

In 1998, R.A. 8424 (the "Tax Reform Act of 1997")[17] was enacted. Relevant portions of said law read:

SECTION 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows:

"TITLE IV — VALUE-ADDED TAX
"CHAPTER I
IMPOSITION OF TAX

"SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

"The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

"The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

"The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

"SECTION 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

---

17 "An Act Amending the National Internal Revenue Code, As Amended, And For Other Purposes."

"(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films;** persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

xxx xxx xxx

"(7) The lease of motion picture films, films, tapes and discs; and

xxx xxx xxx

"SECTION 109. Exempt Transactions. — The following shall be exempt from the value-added tax:

xxx xxx xxx

"(j) Services subject to percentage tax under Title V;

Subsequently, R.A. No. 8761 was enacted imposing value-added tax on certain services and deferred the implementation thereof on certain services.[18] And in 2001, R.A. No. 9010 was enacted deferring the imposition of value-added tax on certain services.[19]

---

[18] "An Act Imposing The Value-Added Tax On Certain Services Beginning January 1, 2001, Amending For the Purpose Section 5 Of Republic Act No. 8424 And For Other Purposes."

387

The latest law on value-added tax is R.A. No. 9238, which excludes several services from the coverage of value-added tax.[20] Now, Sections 108 and 109 of the Tax Code reads:

> SECTION 1. Section 108 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> "(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties.
>
> "The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; **lessors or distributors of cinematographic films**; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; <u>and similar services</u> regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:
>
> "xxx xxx xxx
>
> "(7) The lease of motion picture films, films, tapes and discs; and
>
> "xxx xxx xxx"
>
> SECTION 2. Section 109 of the same Code is hereby amended by rewording paragraph (l) and inserting additional paragraphs after (z) which shall now read as follows:
>
> "SEC. 109. Exempt Transactions. — The following shall be exempt from the value-added tax:

---

19 "An Act To Further Defer the Imposition Of the Value-Added Tax On Certain Services, Amending For the Purpose Section 5 of Republic Act No. 8424, As Amended By Republic Act No. 8761."

20 "An Act Amending Certain Sections of the National Internal Revenue Code of 1997, As Amended, By Excluding Several Services From the Coverage Of the Value-Added Tax And Re-imposing the Gross Receipts Tax On Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions And Other Non-Bank Financial Intermediaries Beginning January 1, 2004."

"xxx xxx xxx

"(j) Services subject to percentage tax under Title V;

"xxx xxx xxx"

(Underlining supplied.)

The history of the value-added system, as shown above, reveals to Us the legislative intent to subject certain sales of services to value-added tax and others to percentage or amusement tax.

The activity of showing cinematographic films, by tradition and under Our laws, is considered not as service covered by value-added tax; but, as an amusement subject to amusement tax. Section 195 (previously Section 260) of Commonwealth Act No. 466, the first codification of the National Internal Revenue Code, as amended,[21] provided that there shall be collected amusement taxes from the gross receipts received by the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement. Upon the issuance of P.D. No. 231 (otherwise known as the "Local Tax Code"), which took effect on July 1, 1975, the collection from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses and other places of amusement of the amusement tax on paid admissions was transferred to the local government units.[22] In the subsequent revision of the National Internal Revenue Code, starting with the 1977 Tax Code, such provision imposing amusement tax on "proprietor, lessee, or operator of theaters or cinematographs" under C.A. No. 466 could no longer be found.

At present, the clear expression of legislative intent is found in the Local Government Code (R.A. No. 7160), which authorizes the local government units to levy and collect from proprietors/operators of theaters and cinemas, amusement tax on the gross receipts from admission ticket. Section 140 of R.A. No. 7160 reads:

[21] "An Act to Revise, Amend and Codify the Internal Revenue Laws Of the Philippines."
[22] "Enacting A Local Tax Code For Provinces, Cities, Municipalities and Barrios."

389

SEC. 140. *Amusement Tax.* - (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

(c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax herein imposed.

(d) The sangguniang panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the sangguniang panlalawigan may impose such surcharges, interests and penalties as it may deem appropriate.

(e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located.

In relation to the above-quoted section, Section 131(c) of the same Code defines "amusement places" to include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances. Thus, the amusement tax is to be imposed only on the admission fee charged for entering the amusement place.[23]

Section 11 of the P.D. No. 231 ("The Local Tax Code),[24] which transferred, among others, the levy and collection of amusement taxes by the national government to the provincial government, to the exclusion of both the national and municipal governments, has been removed. Now, Section 17 of R.A. No. 7160 only provides that local government units shall endeavor to be self-reliant and **shall continue exercising the powers** and discharging the duties and functions currently vested upon them.

While the phrase "to the exclusion of both the national or municipal government" is no longer found in R.A. 7160, it does not mean that the national government is now

[23] Flores, *Local Government Taxation*, 1st ed., 202-203.
[24] P.D. No. 231 was repealed by R.A. No. 7160 ("The Local Government Code of 1991")

390

empowered or authorized to levy and collect tax on the gross receipts from admission fees collected by the operators/proprietors of theaters, cinemas and other amusement places without the Congress enacting a statute enabling the national government to do so. When the legislature enacts a provision, it is understood that it is aware of previous statutes relating to the same subject matter and that in the absence of any express repeal or amendment therein, the new provision should be deemed enacted pursuant to the legislative policy embodied in the prior statutes.[25]

This is the reason why Section 125 of the present National Internal Revenue Code imposes amusement tax on proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks. It excludes proprietors/operators of theaters or cinemas. It reads:

> SEC. 125. *Amusement Taxes.* – There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:
>
> (a) Eighteen percent (18%) in the case of cockpits;
>
> (b) Eighteen percent (18%) in the case of cabarets, night or day clubs;
>
> (c) Ten percent (10%) in the case of boxing exhibitions: *Provided, however,* That boxing exhibitions wherein World or Oriental Championships in any division is at stake shall be exempt from amusement tax: *Provided, further,* That at least one of the contenders for World or Oriental Championship is a citizen of the Philippines and said exhibitions are promoted by a citizen/s of the Philippines or by a corporation or association at least sixty (60%) of the capital of which is owned by such citizens;
>
> (d) Fifteen percent (15%) in the case of professional basketball games as envisioned in Presidential Decree No. 871: *Provided, however,* That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description; and
>
> (e) Thirty percent (30%) in the case of Jai-Alai and racetracks of their gross receipts, irrespective, of whether or not any amount is charged for admission.
>
> For the purpose of the amusement tax, the term '*gross receipts*' embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.
>
> The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee or operator concerned, as well as any party liable, within twenty (20) days after the end of the gross receipts derived during the preceding quarter and pay the tax due thereon.

---

25 *Legaspi vs. Executive Secretary*, 68 SCRA 253.

391

Gross receipts from the admission tickets collected by the owners, proprietors or operators of movie theaters or cinema houses are not mentioned expressly in the above-quoted section of the National Internal Revenue Code. Thus, the legislature clearly intends that there will be only one form of tax to be imposed on proprietors/operators of theaters or cinemas and, that is, amusement tax as found in the Local Government Code. Well-settled is the rule that "a statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[26]

From E.O. No. 272 to R.A. No. 9238, the value-added tax on sales of services remained unchanged. There shall be levied, assessed and collected, a value-added tax on the gross receipts derived from the sale or exchange of services. As defined by the past and present laws on value-added tax, the "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration.

Among other "sales or exchange of services" relating to films, which was subjected to value-added tax, includes "lessors or distributors of cinematographic films"; and, starting in 1994 under R.A. No. 7716, "lease of motion picture films, films, tapes and discs." Note that the services being referred to under the provision of the National Internal Revenue Code, includes **lease and distribution only.** The word **"including"** is the participial form of the verb "include," which in the Webster's Dictionary is defined in its primary sense to mean to confine within, to hold, to contain, to shut up, to enclose; by the Century Dictionary, to comprise as a part. The word has also been defined as having an accumulative sense and as classing that which follows with that which has gone before.[27]

---

[26] *Commissioner of Internal Revenue vs. Court of Appeals*, 271 SCRA 605.
[27] *Words and Phrases*, Permanent ed., vol. 20, pp. 443-444, citing Maben v. Rosser, 103 P. 672, 676, 24 Okl. 588.

392

The VAT laws proceeded to define "sale or exchange of services" to mean the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration and enumerated the kinds of services covered. Please take note that since the introduction of VAT law in 1986 under E.O. 273, and the subject amendments thereto by R.A. Nos. 7716, 8424 and 9238 and even R.A. No 9337, the phrase "sale or exchange of services" is qualified at the end of the enumerations with the phrase "and other similar services." Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. For, if the legislature intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[28] Our tax laws, past and present, **did not** adopt more specific terms in defining "sale or exchange of services" to include the showing of films in public by the owners, operators or proprietors of movie/cinema houses or theaters as subject to value-added tax.

Moreover, the plain meaning of the language in a statute is the safest guide to follow in construing the statute, and a construction based on a forced or artificial meaning of its words and out of harmony of the statutory scheme is not to be favored.[29] *Verba legis*. The language of a statute affords the best means of its exposition and legislative intent must be determined primarily therefrom.[30]

Taxes are not to be imposed or presumed to be imposed beyond what statutes expressly and clearly declared. Otherwise stated, no person or property is subject to taxation unless they fall within the terms or plain import of a taxing statute.[31] Thus, this

---

28 *Mutuc vs. Commission on Election*, 36 SCRA 228; *Vera vs. Cuevas*, 90 SCRA 379; and *National Power Corporation vs. Angas*, 208 SCRA 542.
29 *National Power Corporation vs. Angas*, 208 SCRA 542.
30 *Enjay, Inc. vs. National Labor Relations Commission*, 245 SCRA 588.
31 *Commissioner of Internal Revenue vs. Court of Appeals and Atlas Consolidated Mining and Development Corporation*, 204 SCRA 182.

393

Court's ruling that petitioner is not liable to pay value-added tax under Section 108 of the present Tax Code finds affirmation in the House of Representatives' House Resolution No. 975, submitted by Committee on Rules on October 11, 2005, recommending its approval by the House of Representatives as House Joint Resolution No. 13, which reads:[32]

> WHEREAS, it is imperative for the State to promote and support the development and growth of the theater and local film industry as a medium for the dissemination of aesthetic, cultural and social values for the better understanding and appreciation of the Filipino identity;
>
> WHEREAS, theaters and/or movie houses are the primary media through which the output or artistic creation of the local firm industry is exhibited;
>
> WHEREAS, the viability of the cinema/theater industry is now under threat due to continuous operational losses brought about by low patronage and high taxation regime;
>
> WHEREAS, both theater owners and local movie producers are greatly prejudiced by cheaper home movie alternatives like television and cable programs, as well as by rampant film piracy which turns out inexpensive and untaxed films in VCD or DVD formats and severely undercut the cost of movie tickets;
>
> WHEREAS, the industry is now suffering from the wrong collection of two business taxes, each imposed by the national government and local government units on ticket sales;
>
> WHEREAS, when the collection of the amusement tax on admission to theaters was transferred by the old Local Tax Code of 1973 from the national government to the local government, the industry has been subject to the top rate of thirty percent (30%) amusement tax imposed by the local government units to the exclusion of the national government until the Bureau of Internal Revenue erroneously appreciated the Local Government Code of 1991 and imposed a business tax of ten percent (10%) on the same gross receipts by way of the value-added tax (VAT).
>
> WHEREAS, such erroneous interpretation of the law will result to the imposition of a total top rate of forty percent (40%) business taxes (30% local and 10% national) on gross receipts which, under the circumstances, is unjust, oppressive and confiscatory;
>
> WHEREAS, the foregoing tax imposition, which is consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, will surely lead to the demise of the industry. Now, therefore, be it

---

32 "Joint Resolution Expressing the True Intent Of Congress With Respect To the Prevailing Tax Regime In the Theater And Local Film Industry Consistent With the State's Policy To Have A Viable, Sustainable And Competitive Theater And Firm Industry As One Of Its Partners In National Development."

394

> ***Resolved, as it is hereby resolved by the House of Representatives,*** **That it is the sense of Congress that there should only be one business tax applicable to theaters and movie houses, same being the top rate of thirty percent (30%) amusement tax imposed by cities and provinces under the Local Government Code of 1991, and that consistent with the State's policy to have a viable, sustainable and competitive theater and film industry, it is the intent of Congress under prevailing laws, that the national government be precluded from imposing its own business tax in addition to that already imposed and collected by local government units.** (Emphasis supplied.)

The extrinsic aid of the Joint Resolution quoted-above is resorted to in construing the meaning of Section 108 of the National Internal Revenue Code and the above-quoted Joint Resolution supports this Court's conclusion. Basic is the rule that the courts may consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers.[33]

Proceeding from the foregoing, are Revenue Memorandum Circular ("RMC") No. 28-2001 and Revenue Regulations ("RR") No. 7-95 valid and effective?

The requirement for the validity of administrative issuances has been laid by the Supreme Court in *Commissioner of Internal Revenue vs. Hon. Court of Appeals, Hon. Court of Tax Appeals and Fortune Tobacco Corporation* and We quote:[34]

> "Let us first distinguish between two kinds of administrative issuances – a *legislative rule* and an *interpretative rule.*
>
> In *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary,* the Court expressed:
>
>> 'xxx a legistative rule is in the *nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing.* In this connection, the Administrative Code of 1987 provides:
>>
>> 'Public Participation. – If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

---

33 *Melchor vs. Commission on Audit,* 200 SCRA 704.
34 261 SCRA 237.

395

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

In addition such rule must be published. On the other hand, *interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.'"*

RMC No. 28-2001 issued on July 2, 2001 reads:[35]

SUBJECT:	Taxability of Movie/Cinema House Operators for VAT Purposes.
TO:	All Internal Revenue Officers and Others Concerned.

For the information and guidance of all internal revenue officers and others concerned, quoted hereunder is the dispositive portion of VAT Ruling No. 031-2000 dated September 8, 2000, regarding the VAT treatment of admission receipts derived by operators of amusement places such as, but not limited to movie/cinema house operators, as follows:

"VAT Review Committee Ruling No. 031-2000 dated September 8, 2000

"xxx *gross receipts from admission of persons to places of amusement operated in the course of the taxpayer's trade or business such as, but not limited to, cinema houses, became subject to 10% VAT beginning January 1, 1996, pursuant to the provisions of Section 102, old NIRC (now Section 108, NIRC as renumbered), as amended by R.A. 7716, and as implemented by Revenue Regulations No. 7-95. This does not include, however, amusement places subject to amusement tax under Sec. 125 of the NIRC." (Underscoring supplied)*

All revenue officials, employees and others concerned are hereby enjoined to give this Circular as wide a publicity as possible.

---

35 Revenue Administrative Order ("RAO") No. 1-2003, which classifies and defines BIR Rulings and Issuances, provides that RMCs shall disseminate and embody pertinent and applicable portions, as well as amplications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel.

The Bureau of Internal Revenue did not simply interpret the law when it issued RMC No. 28-2001. It legislated under its quasi-legislative authority, which requires notice, hearing and publication. Such requirements are also found in RMC NO. 20-86, which prescribes the following procedures for tax issuances:

> Subject: Notice, publication and effectivity of internal revenue tax rules and regulations.
> To: All Internal Revenue Officers and Others concerned.
>
> It has been observed that one of the problem areas bearing on compliance with internal revenue tax rules and regulations is lack or insufficiency of due notice to the tax-paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light of the Constitutional provision on "due process of law" and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (Sec. 1, ART. IV, Constitution; ART. 2, New Civil Code).
>
> In order that there shall be a just enforcement of rules and regulations, in conformity with the said basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:
>
> 1. This circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) Revenue Memorandum Circulars and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.
>
> 2. Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed.
>
> Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:
>
> 2.1 The Records Division of the National Office shall furnish, thru registered mail, all of the following business and professional organizations with the corresponding revenue tax issuance:
>
> a. Philippine Institute of Certified Public Accountants;
> b. Integrated Bar of the Philippines;
> c. Philippine Chamber of Commerce and Industry;
> d. American Chamber of Commerce;
> e. Federation of Filipino-Chinese Chamber of Commerce and Industry; and
> f. The Japanese Chamber of Commerce & Industry of the Philippines, Inc.
>
> 2.2 The provisions of paragraph 2.1 shall not be deemed an exclusion of other person or persons who may request for a copy of the corresponding revenue issuance from the Bureau of Internal Revenue.

397

2.3 The Bureau shall issue a press release about the new revenue issuance in any newspaper or newspapers of general circulation. The press release shall cover the highlights or features thereof.

2.4 Effectivity date for enforcement of the new revenue issuance shall take place thirty (30) days from the date the revenue issuance has been sent thru registered mail to the organizations enumerated under paragraph 2.1 hereof.

xxx xxx xxx

5. Strict compliance with the foregoing procedures is enjoined.

(Sgd.) BIENVENIDO A. TAN, JR.
Commissioner

Respondent argues that the RMC No. 28-2001 was issued primarily to regulate the conduct of all internal revenue officers concerned and that it solely informed the BIR revenue officers of what was already a pre-existing VAT law. However, RMC 20-86 enjoins revenue officers strict compliance with the prescribed procedures of due notice, hearing and publication. **Non-compliance therewith renders the revenue issuance/s inoperative**. In this case, as there is no showing that there was due-notice, hearing and publication of RMC No. 28-2001, the same cannot be given force and effect.

As regards RR No. 7-95, pertinent portions thereof read:

SEC. 4.102-1. Value-Added Tax on the sale of services and use or lease of properties. – (a) Sale or exchange of services, as well as the use or lease of properties, as defined in Section 102(a) of the Code shall be subject to VAT.

"Sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by the following:

xxx xxx xxx

5) lessors or distributors of cinematographic films;

xxx xxx xxx

The phrase "sale or exchange of services" shall likewise include:

xxx xxx xxx

(7) The lease of motion picture films, film tapes and discs;

xxx xxx xxx

398

It must be noted that the above-quoted revenue regulations issued by the Secretary of Finance, as recommended by the Commissioner of Internal Revenue, do not impose value-added tax on cinema houses or movie theaters. However, while the Bureau of Internal Revenue has the authority to issue rulings for the effective implementation of the provisions of the tax laws, the legal requirements and the applicable principles in the exercise of its quasi-legislative powers must be observed such as **notice, hearing and publication**. Thus, even granting that the Bureau of Internal Revenue is correct in its interpretation that petitioners are subject to value-added tax, considering the prior issuances and RR No. 7-95, "it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law" as when the administrative rule substantially adds to or increase the burden of those governed.[36] Again, there is non-observance of due process with respect to the issuance of RR No. 7-95.

What is more important, however, is the observance of the principle laid in *Commissioner of Internal Revenue vs. The Hon. Court of Appeals, R.O.H. Auto Products Philippines, Inc. and The Hon. Court of Tax Appeals*, which is apparently applicable but was not observed in the present case, that:[37]

> "The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law."

36 *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, 261 SCRA 236.
37 240 SCRA 368.

In sum, each statute must be construed as to "harmonize it with the pre-existing body of laws."[38] It must be borne in mind that in taxation, it is necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[39] In the present cases at bench, Section 108 of Our National Internal Revenue Code does not expressly provide that there shall be levied, assessed and collected a value-added tax of gross receipts derived by owners, operators or proprietors of cinema theaters or movie houses. Hence, petitioners cannot be held liable to pay deficiency value-added taxes on their cinema ticket sales. This is not a question of interpretative ruling but want of a law imposing value-added tax on such activity.

The claim of respondent that petitioner, in effect, is asking for a tax exemption is without legal basis. The real issue in this case is whether there is a provision in the Tax Code that expressly subject cinema owners or operators to value-added tax. The Court has already settled the issue from the previous discussion. We reiterate that petitioner cannot be held liable to pay deficiency value-added tax as there is no law imposing tax on owner, operators or proprietors of cinema houses or movie theaters. The better rule in interpreting tax laws is found in *Commissioner of Internal Revenue vs. The Court of Appeals, The Court of Tax Appeals and Ateneo de Manila University.*[40] The Supreme Court declared:

> "xxx The Commissioner should have determined first if private respondent was covered xxx, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom. **The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that '(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. xxx *(A) tax cannot be imposed without clear and express words* for that purpose. Accordingly, the general rule of requiring *adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are *not to be* extended by implication.**

---

38 *Commissioner of Customs vs. ESSO Standard Eastern, Inc.*, 66 SCRA 113.

39 *Commissioner of Internal Revenue vs. Algue, Inc.*, 158 SCRA 9.

40 271 SCRA 605. See also *Marinduque Iron Mines Agents, Inc. vs. Municipal Council of the Municipality of Hinabangar, Samar*, 11 SCRA 416; and *Commissioner of Internal Revenue vs. Fireman's Fund Ins., Co.*, 148 SCRA 315.

400

> **Parenthetically, in answering the question of who is subject to tax statutes, it is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.**" (Emphasis supplied.)

IN VIEW OF ALL THE FOREGOING, this Court hereby **GRANTS** the Petitions for Review. Respondent's Decisions denying petitioners' protests against deficiency value-added taxes are hereby *REVERSED*. Accordingly, Assessment Notice Nos. VT-00-000098, VT-99-000057, VT-00-000122, 003-03 and 008-02 are **ORDERED** cancelled and set aside.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

401